(16,444.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 269.

THE VILLAGE OF NORWOOD, APPELLANT,

vs.

ELLEN R. BAKER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

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1 THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, } *ss:*

At a stated term of the circuit court of the United States of America within and for the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court-rooms, at the city of Cincinnati, Ohio, in said district, on the first Tuesday of April, being also the seventh day of that month, in the year of our Lord one thousand eight hundred and ninety-six, and of the American Independence the one hundred and twenty-first—present, the Honorable George R. Sage, district judge—among the proceedings had were the following, to wit:

ELLEN R. BAKER, Complainant,
vs.
THE VILLAGE OF NORWOOD, a Municipal Corporation, Situated in Hamilton County, Ohio, Duly Organized under the Laws of the State of Ohio; John Hagerty, Auditor of Hamilton County, Ohio, and Leo Schott, Treasurer of Hamilton County, O., Respondents. } No. 4788. In Equity.

Be it remembered that heretofore, to wit, on the 24th day of January, in the year of our Lord one thousand eight hundred and ninety-five, came the complainant, by her solicitor, and filed in the clerk's office of the court aforesaid her certain bill of complaint against the defendants herein. Said bill of complaint is clothed in the words and figures following, to wit:

Bill of Complaint.

2 In the Circuit Court of the United States in and for the Southern District of Ohio, Western Division.

ELLEN R. BAKER, Complainant,
vs.
THE VILLAGE OF NORWOOD, a Municipal Corporation, Situated in Hamilton County, Ohio, Duly Organized under the Laws of the State of Ohio; John Hagerty, Auditor of Hamilton County, Ohio, and Leo Schott, Treasurer of Hamilton County, Ohio, Respondents. } No. —. Bill in Equity.

To the honorable the judges of the circuit court in and for the southern district of Ohio, western division:

And now comes the complainant herein and respectfully shows to this honorable court—

That the defendant The Village of Norwood is a municipal cor-

poration, recently incorporated under the laws of the State of Ohio as a municipal organization, located and situated in the county of Hamilton, Ohio; that John Hagerty is the auditor of said Hamilton county, Ohio, and that Leo Schott is the treasurer of said Hamilton county, Ohio.

Complainant says she is a resident of Hamilton county, Ohio, and a citizen thereof, and is the owner of real estate located in the said county and located likewise within the territorial limits of the said defendant corporation, as hereinafter shown; that she was the owner of the said real estate hereinafter described before the organization of the said municipal corporation and before its incorporation as a village; that prior to the incorporation of the said village she was the owner, as aforesaid, of real estate located at the corner of Williams avenue and Baker streets, as it was then called,
since changed to and known as Ivenhoe avenue; that prior
3 to the incorporation of the said village an avenue known as Hopkins avenue had been projected and built through the territory now included within the *territory now included within the* territorial limits of the said defendant corporation; that the said Hopkins avenue had been dedicated to public uses as a street and thoroughfare and had been improved as such by the county commissioners of Hamilton county, Ohio, lawfully authorized so to do under what was commonly known as the "two-mile assessment act."

And likewise before the incorporation of the defendant the street known as William- avenue had been opened and dedicated as a street that likewise ran through territory now included within the territorial limits of the said defendant corporation.

That complainant says that prior to the incorporation of the said village she was the owner of certain real estate abutting and fronting upon Williams avenue and extending back therefrom a distance of three hundred (300) feet; that prior to the incorporation of the said defendant there had been dedicated to the public use and for street purposes a street then known as Baker street, that runs north and south, crossing Hopkins avenue at right angles, and which said street had been so dedicated from a point south of Hopkins avenue to a point within 300 feet of Williams avenue, at which point in the said Baker street the said dedication to the public use as a street terminated.

The said Williams avenue runs east and west parallel with Hopkins avenue and south thereof; that, as aforesaid, the said Baker St. had been dedicated by property-holders from Hopkins avenue south to a point within three hundred feet of Williams avenue, where the property of this plaintiff began; that subsequent thereto and after the dedication and improvement of Hopkins avenue, the dedication of Williams avenue and of Baker street, as heretofore shown, the said defendant corporation became duly incorporated under the laws of Ohio as village, organized a village government by the election of mayor, clerk, and council, and
4 proceeded to exercise the authority and has since exercised

the authority conferred by statute in Ohio upon municipal organizations known as villages.

Complainant further says that the said defendant corporation after its incorporation proceeded to exercise the right of eminent domain, as under the statute of Ohio it had the right to do, and thereupon began proceedings in the probate court of Hamilton county, Ohio, a court of competent jurisdiction, to condemn for public use for the benefit of the public and of the said village the said strip of ground beginning 300 feet north of Williams avenue and extending southwardly to Williams avenue a distance of three hundred feet as aforesaid and fifty feet in width, the said Baker street up to that point having been theretofore fifty feet in width as dedicated, as herein shown; that the said Baker street likewise extended for some distance south of Williams avenue and through other property — had likewise been dedicated to public uses as a street and thoroughfare before the incorporation of the said defendant.

The complainant likewise says that she is the owner of real estate upon either side of the said strip of ground so undertook to be condemned by the defendant, owning 150 feet upon Williams Ave. upon the west of said strip of 300 feet and back in depth a distance of 300 feet and more, and likewise owned the property upon the east side of said strip for a distance of 150 feet and back a depth of 300 feet along and adjacent to the said strip so condemned and sought to be condemned by the said defendant; so that therefore the complainant shows that she was not only the owner of the said strip of ground, 300 feet by 50, extending northwardly from Williams avenue, which said strip the said defendant sought to condemn in order to complete and open the said Baker street and make it a through street or thoroughfare, but she likewise owned property upon either side of said strip for a distance of 300 feet and 150 feet and more upon either side of the same.

5 The complainant says that without consent upon her part and without her acquiescing or desiring so to do the said defendant village undertook by ordinance to direct the condemnation of the said strip of ground so belonging to her, and directing its solicitor to take the proper steps and proceedings in the said probate court in Hamilton county, Ohio, to condemn the same, and thereupon, upon a trial of the said cause in the said probate court, the said probate court found that the value of the said strip of ground so proposed to be condemned and taken by the defendant corporation was $2,000, and thereupon in the said condemnation proceedings the said defendant corporation was adjudged to pay to this complainant as and for the valuation of the said strip of ground so condemned and taken by the defendant corporation the sum of $2,000.

Complainant further says that prior to the commencement of the said condemnation proceedings the common council of the said defendant had changed the name of the said street or thoroughfare from Baker street, as it had been prior to the incorporation of the said defendant village and for some time thereafter and as it is

known and was known upon the county plats and records, to Ivenhoe avenue, so that the said condemnation proceedings proceeded as if for the purpose of opening and extending Ivenhoe avenue, which was in fact Baker street as originally dedicated upon the plats of the county of Hamilton by the owners, who had dedicated north and south of the strip of this plaintiff as aforesaid.

Your complainant complains of the defendant corporation that the said corporation, through its officers, its council, clerk, and mayor, undertook and *have* undertaken to assess back upon this plaintiff's 300 feet upon either side of the said strip so taken, not only the said two thousand dollars, the amount adjudged to this plaintiff as the value of her property so taken, but also counsel fees, expenses of the suit, expenses and fees of expert witnesses, and other costs, fees, and expenses to this complainant unknown, and
6 has proceeded to assess for opening and extending the said Ivenhoe street or avenue for the 300 feet upon each side upon her premises, making 600 feet in all of frontage upon the said strip so condemned by the defendant corporation, the sum of $2,218.58, payable in installments, with interest at six per cent., the first installment being $354.97 and the last or tenth installment $235.17, lessening the same from year to year in an amount of about $13 per annum.

That is to say, the said defendant corporation has undertaken to take 300 by 50 feet of this complainant's property and, fixing the valuation upon it by proceedings at law, now undertakes to assess upon the complainant's adjacent property, 300 feet upon each side, the said $2,000, the value of the same as adjudged by the court in the said condemnation proceedings, with all of the costs incidental thereto, including counsel and witness fees, so that in effect the property of this complainant has been taken and is sought to be taken by the defendant corporation for the uses of itself and the general public without any compensation in fact to the complainant therefor, but at an actual expense and outlay in addition—that is to say, the corporation purposes by assessment to make this complainant not only pay for her own property taken for the benefit of the defendant, but also to pay the costs of so taking it without compensation.

Complainant further says that by force of section 2286 of the Revised Statutes of Ohio such assessment is made the subject of a civil action, whereby the said municipal corporation may be made the plaintiff and this complainant may be made the defendant, and the said complainant may be sued in an action at law for said assessment as for money owing to the corporation, and there may be a recovery, the only limitation upon the same being that the owner of the adjacent property so sought to be assessed shall not be liable beyond her interest in the property assessed at the time of the passage of the ordinance or resolution to improve.

Complainant says that this is in violation of her constitutional rights that her property shall not be taken without full com-
7 pensation paid to her therefor; that it is in effect, under guise

of the village ordinance, taking her property, not only without compensation, but with taking the expenses to her besides.

The complainant further says and avers that she has no remedy in this matter save by injunction; that by force of statute in Ohio, where it is sought to impose upon the owner of realty an illegal assessment, the said owner is authorized to contest such imposition and assessment by injunction and not to wait and pay in said money into the treasurer and then bring an action to recover the same from the corporation as illegally assessed.

Complainant further says that the said defendant corporation, through its clerk, has certified to the defendant John Hagerty, auditor of Hamilton county, Ohio, the first installment of the assessment hereinbefore set out, and that said auditor of Hamilton county has entered the same on the tax duplicate of said county and has added a penalty thereon and undertakes to make said assessment and penalty a charge and a lien upon all the property of the complainant in Hamilton county, Ohio.

That said auditor has likewise certified said assessment and penalties to the treasurer of said Hamilton county, Ohio, and that said treasurer has caused the same to be placed upon the tax duplicate as against this complainant and has made the same a charge and a lien upon all the real estate of the complainant, and that the said treasurer threatens and is about to collect the said installment and penalties added thereto so charged up against the said property of this complainant, all without warrant or authority of law.

Wherefore she invokes her remedy given her by statute by injunction. She avers that the said seizure and taking of her said property and the pretended condemnation of the same and assessment of the same with added costs back upon her own property for the benefit of the defendant corporation and the general public is a seizure of her property without compensation, not only that, but at costs to her besides, in that the defendants have undertaken to make her pay for the taking of her property without a compensation in addition to the value of the property, and that she is without
8 remedy and powerless unless she may have and invoke the equitable interference, as the statute authorizes her, of this honorable court.

Complainant further says that the respondents have seized the said property so condemned, and that the said proceeding by assessment is simply a statutory evasion by which it is sought to evade the constitutional right of the complainant that her property shall not be taken from her without just compensation, and that under pretense and guise of the said condemnation proceedings and assessment the said corporation, in fact, took the property of complainant without paying her any compensation therefor in addition to paying the costs of said wrongful taking.

Wherefore she avers that the said assessment is illegal and unconstitutional and is in violation of the 5th amendment to the Constitution of the United States, which provides, "Nor shall private property be taken for public use without just compensation," and is in violation of section 1 of the 14th amendment to the Constitu-

tion, which provides, "Nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," and is likewise in violation of section 19 of the bill of rights of the constitution of Ohio, that likewise provides that—

"Private property shall not be taken for public use, without compensation therefor made in money, without deductions for benefits to any property of the owner," and cannot and ought not to be maintained; and she prays an injunction against the defendants, who threaten, under the statutes of Ohio, to collect the same and to assess a penalty of ten per cent. for non-payment and to make the same a lien on and against her property, whereby in the event of her non-payment her said property shall and will be sold at tax sale and she deprived of the title of the same.

9 The complainant prays that the defendants may be temporarily enjoined from making such assessment, from entering the same upon their records, from assessing any penalty thereon, and from finally collecting the same, and that she may have an order of this court that such assessment is illegal and void, and a perpetual injunction forever restraining defendants from assessing against her said property within the territorial municipal corporation, in such equitable manner that she only be required to bear her proportion of the burden imposed by such condemnation proceedings, and that a subpœna may be issued for the defendants. She likewise prays for all other proper aid and relief and her costs.

C. W. BAKER,
Attorney for Complainant.

STATE OF OHIO, } ss:
Hamilton County, }

Ellen R. Baker, being first duly sworn, says that the allegations in this petition are true as she verily believes.

ELLEN R. BAKER.

Sworn to before me and subscribed in my presence this 8th day of January, A. D. 1895.

DAVID DAVIS,
[SEAL.] *Notary Public, Hamilton County, Ohio.*

Endorsed: To the clerk: Issue summons. C. W. Baker, attorney for complainant.

10 And afterwards, to wit, on the 28th day of January, A. D. 1895, the following cost bond was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Cost Bond.

Circuit Court of the United States for the Southern District of Ohio, Western Division, *ss:*

ELLEN R. BAKER, Complainant,
vs.
THE VILLAGE OF NORWOOD *et al.*, Respondents. } #4788. Cost Bond.

I hereby acknowledge myself security for costs in this case.
MICHAEL McDERMOTT. [SEAL.]

Taken and acknowledged before me this 28th day of January, 1895.

ROB'T C. GEORGI,
[SEAL.] *Deputy Clerk U. S. Circuit Court, S. D. O.*

SOUTHERN DISTRICT OF OHIO, *ss:*

I, Michael McDermott, a resident of said district, do solemnly swear that after paying my just debts and liabilities I am worth two thousand dollars in real estate within the jurisdiction of this court and subject to execution, levy, and sale.
MICHAEL McDERMOTT.

Sworn to and subscribed before me this 28th day of January, A. D. 1895.

ROB'T C. GEORGI,
[SEAL.] *Deputy Clerk U. S. Circuit Court, S. D. O.*

11 And afterwards, to wit, on the same day as aforesaid, there was issued out of the clerk's office of the court aforesaid our certain subpoena in chancery, directed to the marshal of the district and against the defendants herein. Said subpoena is clothed in the words and figures following, to wit:

Subpoena in Chancery.

UNITED STATES OF AMERICA, } *ss:*
Southern District of Ohio, }

The President of the United States of America to the marshal of the southern district of Ohio, Greeting:

You are hereby commanded to summon the Village of Norwood, a municipal corporation, situated in Hamilton county, Ohio, duly organized under the laws of the State of Ohio; John Hagerty, auditor of Hamilton Co., Ohio, and Leo Schott, treasurer of Hamilton county, Ohio, citizen- of and resident in the State of Ohio, if they be found in your district, to be and appear in the circuit court of the United States for the southern district of Ohio aforesaid, at Cincinnati, on the first Monday in April next, to answer a certain

bill in chancery filed and exhibited in said court against them by Ellen R. Baker, citizen of and resident in the State of Ohio.

Hereof you are not to fail under penalty of the law thence ensuing; and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 28th day of January, A. D. 1895, and in the 119th year of the Independence of the United States of America.

Attest:

[SEAL.] B. R. COWEN, *Clerk.*

12 MEMORANDUM.—The said defendants are required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday of March, 1895; otherwise the said bill may be taken *pro confesso.*

B. R. COWEN, *Clerk.*

Endorsed thereon: Michael McDermott acknowledges himself security for all costs for which the plaintiff may be liable in this suit.

And afterwards, to wit, on the 30th day of January, A. D. 1895, came the marshal of the district to whom the aforesaid subpoena was in form directed and returned the same into the clerk's office of the court aforesaid, with his proceedings thereon endorsed in the words and figures following, to wit:

Marshal's Return.

UNITED STATES OF AMERICA, } *ss*:
Southern District of Ohio, }

Received this writ at Cincinnati, Ohio, on the 28th day of January, A. D. 1895, and on the 29th day of January, A. D. 1895, at Cincinnati, Ohio, I served the same by handing a true copy thereof, with the endorsement thereon, personally to David Davis, mayor, and W. E. Wichgar, clerk, of the village of Norwood, Ohio, and John Hagerty, auditor of Hamilton county, Ohio, and to George Schott, deputy treasurer for Hamilton county, Ohio, in charge of the treasurer's office, who accepted the same as personal service on the treasurer, stating he had authority to do so.

4 services	8 00
4 copies	2 00
4 M. of W	24
	$10 24

HENRY BOHL,
U. S. Marshal.

13 And afterwards, to wit, on the 4th day of March, A. D. 1895, the following appearance was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Appearance of Wm. E. Bundy, Solicitor.

United States Circuit Court, Southern District of Ohio, Western Div.

ELLEN R. BAKER
vs.
THE VILLAGE OF NORWOOD *et al.* } No. 4788.

To the clerk of said court:

Please enter my appearance as solicitor and of counsel on behalf of the Village of Norwood.

WM. E. BUNDY,
Solicitors for said Respondent.

And afterwards, to wit, on the 27th day of April, A. D. 1895, the following answer was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Answer.

United States Circuit Court, Western Division, Southern District of Ohio.

ELLEN R. BAKER, Complainant,
vs.
THE VILLAGE OF NORWOOD *et al.*, Respondents. } No. 4788. Answer.

Now comes the Village of Norwood to this honorable court and for its answer to the bill in equity in this cause admits that it is a municipal corporation, located in Hamilton county, Ohio; that John Hagerty is the auditor and that Leo Schott is the treasurer of such county, and that the complainant is a resident of Hamilton county and a citizen thereof and is the owner of the real estate described, all as stated in the bill. This respondent also admits the location and dedication of Hopkins avenue, Williams avenue, and
14 Baker street, now known as Ivenhoe avenue, all as therein alleged, and that such municipal corporation was duly organized under the laws of Ohio; that it proceeded to exercise the right of eminent domain and appropriated to public use for street purposes the strip of ground 50 by 300 feet in dimensions, as described, for the opening and extension of Ivenhoe avenue, formerly Baker street, and that the complainant owned all the real estate upon either side of said strip of land which was condemned through proceedings in the probate court of Hamilton county, Ohio, and that the value of said land was fixed by the jury in said cause at $2,000. This respondent further admits that by ordinance it has levied and assessed by the front foot upon the property bounding and abutting upon such improvement all the costs and expenses incident to such appropriation, including the amount of the verdict in the probate court, and that such assessment has been divided into ten annual installments, with interest added, and that the first of such install-

ments has been certified to the county auditor; that the same has been placed upon the tax duplicate and sent to the county treasurer for collection as a lien and charge against the abutting property owned by the complainant.

This respondent denies each and every other allegation contained in the bill, and specifically denies that it has taken the complainant's property without compensation; that such assessment is made the subject of a civil action by force of section 2286 of the Revised Statutes of Ohio, and that such assessment is in violation of the complainant's constitutional rights, that it is illegal, or that it is in conflict with any section or amendment of the bill of rights of the constitution of the State of Ohio or the Constitution of the United States.

This respondent further alleges and maintains that the complainant herein received and accepted full compensation in money for her property so appropriated to public use, and that in the original ordinance to condemn the same, which was duly passed and posted according to law, the intention of the municipality to
14½ assess back upon the abutting property all the costs and expenses of such appropriation, including the values to be assessed by the jury for the property taken, was published and notice thereof was had by the complainant, and such appropriation proceedings and consequent assessment were all in strict conformity with the laws and statutes of the State of Ohio and in pursuance of due process of law. This respondent further says that the said opening and extension of Ivenhoe avenue constituted a public improvement for which the abutting property was liable to assessment under the laws of Ohio, and that the counsel fees, witness fees, and costs included in such total assessment were a part of the legitimate expenses of making such improvement.

This respondent, further answering, says that at any event an expense has been incurred by the municipal corporation in opening said street equal to the full amount of the said assessment, which is a proper charge against the complainant's abutting property.

Wherefore this respondent prays that such assessment may be sustained, or that the court may render judgment for the full amount thereof as a proper charge against the complainant's property, and that the relief asked for by her may be denied, and that her bill in equity may be dismissed at the costs of the complainant.

The Villega of Norwood, being the only one of the respondents having any real or vital interest in this action, prays that it may have all protection and relief herein that equity may require.

WM. E. BUNDY,
Solicitor of the Village of Norwood.

STATE OF OHIO, }
Hamilton County, } ss:

David Davis, being first duly sworn, says that he is the mayor of the village of Norwood, and that he believes the allegation of the foregoing answer to be true.

DAVID DAVIS, *Mayor.*

Sworn to before me and subscribed in my presence this 27th day of April, A. D. 1895.

[SEAL.] SAM'L S. CHURCH,
N. P., Ham. Co., O.

40c. due notary.

15 And afterwards, to wit, on the 28th day of April, A. D. 1895, the following replication was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Replication.

United States Circuit Court, Southern District of Ohio, Western Division.

ELLEN R. BAKER
vs.
THE VILLAGE OF NORWOOD *et al.* } Reply.

This complainant, saving and reserving to herself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants, for replication thereunto saith that she doth and will aver, maintain, and prove her said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this complainant; without that, that any other matter or thing in the said answer contained material*ly* or effectual*ly* in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all of which matters and things this complainant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by her said bill she hath already prayed.

C. W. BAKER,
Att'y for Pl't'ff.

STATE OF OHIO, } *ss:*
Hamilton County, }

On this 25th day of May before me personally appeared the above-named Ellen R. Baker and made oath that she has read the above replication subscribed by her and knows the contents thereof, and that the same is true of her own knowledge except as to the
16 matters which are therein stated to be on her information or belief, and that as to those matters she believes it to be true.

ELLEN R. BAKER.

Sworn to before me and subscribed in my presence this 25th day of May, A. D. 1895.

[SEAL.] WILLIAM R. COLLINS,
Notary Public, Hamilton County, Ohio.

And afterwards, to wit, on the 22nd day of November, A. D. 1895, the following Exhibits "A" and "B" were filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

EXHIBIT "A."

R. B. II, *pp.* 60.

COUNCIL CHAMBER,
NORWOOD, O., *Oct. 5th*, 1891.

* * * Council met in regular session, with his honor Mayor McNeill presiding.

Present at roll-call were Messrs. Guynn, Mehmert, Pape, Rolson, Thomessen.

Absent: Mr. Hess.

R. B. II, *pp.* 63.

* * * The recommendation of the board of improvements in reference to appropriation of certain private property for the purpose of opening and extending Wayland, Sherman, and Ivenhoe avenues and Linden street read and ordered received and filed. (For copy see Exhibit A.)

R. B. II, *pp.* 64.

* * * An ordinance to appropriate property for the purpose of extending Ivenhoe avenue was given its first reading and referred to the committee on law and contracts.

17 R. B. II, *pp.* 67.

COUNCIL CHAMBER,
NORWOOD, O., *Oct.* 12, 1891.

* * * Council met in adjourned session at 8 o'clock, with his honor Mayor McNeill presiding.

Present at roll-call: Messrs. Guynn, Mehmert, Pape, Rolsen, Thomessen.

Absent: Mr. Hess.

R. B. II, *pp.* 68.

* * * The committee on law and *contents* returned the ordinances referred for the purpose of opening and extending Wayland, Linden, Ivenhoe, and Sherman avenues, with recommendation for passage. On motion, ordered accepted.

R. B. II, *pp.* 68.

* * * An ordinance to appropriate property for the purpose of opening and extending Ivenhoe avenue was given its second reading.

R. B. II, *pp.* 72.

COUNCIL CHAMBER,
NORWOOD, O., *Oct.* 19, 1891.

* * * Council met in regular session at 8 o'clock p. m., with his honor Mayor McNeill presiding.

Present at roll-call: Messrs. Guynn, Hess, Mehmert, Pape, Rolsen, Thomessen.

Absent: None.

R. B. II, *pp.* 73.

* * * An ordinance, No. 285, to appropriate property for the purpose of opening and extending Ivenhoe avenue was given its third reading and passed by the following vote:

Yea—Guynn, Hess, Pape, Rolsen, Thomessen.

Nay—Mehmert.

(For copy see Exhibit B.)

18 R. B. II, *pp.* 149.

COUNCIL CHAMBER,
NORWOOD, O., *April* 4, 1892.

* * * Council met in regular session, with his honor Mayor McNeill presiding.

Present at roll-call: Messrs. Guynn, Mehmert, Pape, Rolsen, Thomessen.

Absent: Mr. Hess.

Resolution by Mr. Guynn.

* * * Resolved, That the verdicts of the jury returned respectively in causes 4886 and 4904 in the Hamilton county probate court, assessing $2,000.00 as the compensation to be paid Ellen R. Baker for the property taken for the opening of Ivenhoe avenue, and $2,775.00 as the total compensation and damages to be paid Messrs. Smith, Mills, and the C., L. & N. R'y Co. for the opening of Madison avenue, be accepted as final, and that the said respective tracts be taken and paid for by the village at said figures.

* * * Resolved further, That the engineer be directed to compute the entire cost and expenses separately in each case in conjunction with the finance committee, and to prepare the necessary assessing ordinance providing for the issuance of bonds, as provided in the appropriating ordinance heretofore passed.

* * * Adopted.

Yea—Guynn, Mehmert, Pape, Rolsen, Thomessen.

R. B. II, *pp.* 161.

COUNCIL CHAMBER,
NORWOOD, O., *May* 2, 1892.

* * * Council met in regular session, with his honor Mayor McNeill presiding.

Present at roll-call: Messrs. Guynn, Mehmert, Rolsen, Thomessen.

Absent: Hess and Pape.

19 R. B. II, *pp.* 162.

* * * Mr. Pape reports present.

* * * The committee on finance returned the resolution referred relative to the compensation for costs of appropriating property for the opening of Ivenhoe and Madison avenue-, with recommendation as follows:

Your committee on finance would recommend for passage the two ordinances covering condemnation of Madison and Ivenhoe avenue- as submitted by the engineer thereupon.

An ordinance, No. 366, to assess a special tax on real estate bounding and abutting on Ivenhoe avenue from Williams avenue to 300 feet north was given its first reading.

On motion, the rules were suspended that the ordinance may go to second, third reading and final passage this evening.

Yea—Guynn, Mehmert, Pepe, Rolsen, Thomessen.

Ordinance read second time, ordinance read third time and passed.

Yea--Guynn, Mehmert, Pape, Rolsen, Thomessen.

(For copy see Exhibit "C.")

* * * I, W. E. Wichgar, clerk of the village of Norwood, hereby certify that the foregoing is a true transcript from the minutes of the council of the village of Norwood.

W. E. WICHGAR,

[SEAL.] *Clerk of the Village of Norwood, O.*

20 EXHIBIT "A."

VILLAGE OF NORWOOD,
OFFICE BOARD OF IMPROVEMENTS.

The honorable council of the village of Norwood.

GENTLEMEN: The operations of this board have heretofore been almost wholly confined to the improvement of streets where the interest of citizens resident thereon require- prompt action and would not permit of the delays usually associated with a speculative non-resident or indifferent element. These necessities having been largely met, we deem it our duty to give immediate attention to matters affecting the general welfare of the whole village, and to supplement the work of the platting commission, as far as practicable, with such action as will produce the best results consistent with the least delay.

Any one familiar with Cincinnati cannot fail to note the constant succession of irregularity in streets produced by successive additions of acreage property, subdivided in almost every instance in utter disregard of public rights or convenience and with the sole object of yielding the greatest possible returns to speculative ventures; hence the unsightly angles, misshaped lots, needless offsets in streets that should be continuous, irregular widths, and other blemishes that stand forever as a monument to human cupidity and a curse to generations to come.

What is true of Cincinnati is true of all large cities and in less degree of villages.

In our judgment, there is no time like the present to guard against these follies and errors, which, once made, are forever made or can be corrected only at enormous cost. There is no subject which should more engage the liveliest interest of all good citizens, and to that end we invite the active co-operation of every official in every capacity in the village.

21 There are in Norwood squares of over a thousand feet in length which should be cut in two. There are streets running against new subdivisions which should be opened through. There are lanes dignified with the name of streets which should be widened and other defects to which attention will be called at the proper time.

There are platted streets already dedicated which should be opened, and we would suggest the passage of a general ordinance requiring that all fences or other obstructions upon such be removed from off the public line.

Examination of the village plat shows four streets recently platted through to which we invite attention and desire to co-operate with the platting commission in securing at once for public use. These are Wayland, Sherman, and Ivenhoe avenues and Linden street. The necessity for the acquisition of certain private property by the village to comple- these streets is briefly set forth by that commission, but, however brief, it needs no further suggestion to the most casual observer to immediately apprehend the urgent need of speedy and decisive action to secure them.

Whatever private interests may interpose are so small in comparison to the general public welfare that they need not be considered, except from a legal standpoint. As with Harris avenue, the main artery of East Norwood, now well advanced towards its permanent and proper improvements, the interests of our whole people are so involved that the insignificant personal concern of the few cannot be permitted to arrest them.

It is believed that the property in question can be secured to the village at a trifling cost, certainly cheaper now than ever again; that the organic law of the State provides simply and efficiently for this, and we would therefore urge that this entire matter be given at once into the hands of the solicitor for prompt and exhaustive examination.

Respectfully,

(Signed) H. C. MEADER.
AARON McNEILL.
WM. WINDHORST.

22 I hereby certify that the foregoing is a true copy of the report and recommendation of the board of improvements submitted to the village council Oct. 5, 1891.

[SEAL.] W. E. WICHGAR, *Clerk.*

Clerk's office, Norwood, O., Nov. 20, 1895.

23 No. 285.

An ordinance to condemn property for the purpose of opening and extending Ivenhoe avenue, from the section line to Williams avenue.

SECTION 1. Be it ordained by the counsil of the village of Norwood, two-thirds of all the members elected thereto concurring and declaring the same to be necessary, That its intention is hereby declared to condemn and appropriate to the public use for street purposes, and it hereby condemns and appropriates to such public use for the purpose of opening and extending Ivenhoe avenue (formerly Baker street) from the south line of section four (4) township three and fractional range two (2) of the Miami purchase, to Williams avenue, the property described as follows, to wit: Commencing at a point in the south line of section 4, T. 3, F. R. 2, M. P., said point being one hundred and fifty (150) feet west of the southeast corner of L. C. Hopkins's subdivision, as recorded in Plat Book No. 4, page 204, Hamilton county (Ohio) records; thence south with the east line of Ivenhoe avenue three hundred (300) feet to the north line of Williams avenue; thence west with the north line of Williams avenue fifty (50) feet; thence north parallel to the first-described line three hundred (300) feet; thence fifty (50) feet east to the place of beginning. And the solicitor is hereby authorized and instructed to institute the necessary proceedings and apply to the courts for an inquiry and assessment of the compensation to be paid for such property.

SECTION 2. The cost and expense of the condemnation and appropriation of said property, including the compensation paid to the owners thereof, the cost of proceedings, the cost of advertising, and all other costs, and the interest on bonds issued, if any, shall be assessed per front foot upon the property bounding and abutting on that part of Ivenhoe avenue, as condemned and appropriated
23½ herein, the assessments therefor to be payable in ten (10) annual installments, if deferred, and the same collected as prescribed by law and in the assessing ordinance hereafter to be passed. Bonds shall be issued in anticipation of the collection of the assessments before the same are issued, and within the time prescribed in said assessing ordinance.

SECTION 3. This ordinance shall take effect from and after the earliest period by law.

Passed October 19, 1891.

AARON McNEILL, *Mayor.*

Attest: W. E. WICHGAR, *Clerk.*

* * * I, W. E. Wichgar, clerk of the village of Norwood, hereby certify that the foregoing is a true copy of an ordinance, No. 285, passed by the council of the village of Norwood on the 19th day of October, 1891; I further certify that the same was duly published by posting true copies thereof in six (6) of the most public places in the corporation, to wit:

1 at the B. and O. S. W. R'y station, East Norwood.
1 " " " " " " —— Norwood.
1 " " C., L. & N. R'y " —— Norwood.
1 " " " " " " Hopkins avenue.
1 " " " " " Ivenhoe.
1 " " town hall, first publication having been made Nov. 3, 1891.

[SEAL.]

W. E. WICHGAR,
Clerk of the Village of Norwood.

24 No. 366.

An ordinance to assess a special tax on real estate bounding and abutting on Ivenhoe avenue, from Williams avenue to a point 300 feet north.

SECTION 1. Be it ordained by the council of the village of Norwood, Ohio, That there be levied and assessed on each front foot of the several lots of land bounding and abutting on Ivenhoe avenue, from Williams avenue, to a point three hundred feet north, the sums hereinafter named for each and every year as specified, to wit:

1892,	59.1625	cents	(59	cents,	1	mill,	0.625 mills).
1893,	56.9439	"	(56	"	9	mills,	0.439 "
1894,	54.7253	"	(54	"	7	"	0.253 "
1895,	52.5067	"	(52	"	5	"	0.067 "
1896,	50.2881	"	(50	"	2	"	0.881 "
1897,	48.0695	"	(48	"	0	"	0.695 "
1898,	45.8509	"	(45	"	8	"	0.509 "
1899,	43.6323	"	(43	"	6	"	0.323 "
1900,	41.4137	"	(41	"	4	"	0.137 "
1901,	39.1951	"	(39	"	1	"	0.951 "

To pay the cost and expense of condemning property for the extension of said Ivenhoe avenue between the points aforesaid, together with the interest on the bonds issued, to provide a fund to pay for said condemnation according to the estimate of Chas. A. Ewing, engineer for the village.

* * * SECTION 2. That the owners of the several lots of land upon each front foot of which the sums aforesaid are assessed, shall pay the amount of money by them severally due in that behalf, to the clerk of the village, on or before the thirtieth day following the day of final approval of this ordinance, in each of the said several years; and in default of such payment, the said clerk shall forthwith certify all unpaid assessments to the county auditor, to be by him placed on the tax duplicate and collected according to law.

25 SECTION 3. That to provide a fund for the payment of the cost and expense of condemning said Ivenhoe avenue, the mayor of the village and the clerk of the village be, and they are hereby, authorized to issue ten (10) bonds of the village of Norwood,

Ohio, for the sum of two hundred and twenty-one dollars and eighty-six cents ($221.86), each payable by the treasurer of the village at the Atlas National bank, Cincinnati, Ohio, in one, two, three, four, five, six, seven, eight, nine, and ten years from the thirtieth day following the day of the final approval of this ordinance, with interest thereon at the rate of six per cent. per annum, payable annually, said bonds to be signed by the aforesaid village officers, and sold by them under the direction of the finance committee of this council, for not less than their par value, and the proceeds thereof shall be applied to the payment of the cost and expenses of said condemnation, and to no other purpose whatsoever; and for the payment of said bonds, and the interest thereon, the revenue and faith and all the real and personal property of the village are hereby pledged: Provided, that if on or before the sale of said bonds any of the owners of property on said Ivenhoe avenue shall pay the whole of said ten (10) installments in cash, less the interest on said ten (10) deferred installments, the amount so paid in cash shall be applied to the payment of the amounts due, and the amount of said bonds to be issued shall be reduced by deducting the amount so paid in cash from the total amount of the fund to be provided, and the bonds issued shall be to provide a fund for the unpaid remainder, and each bond shall be for one-tenth ($\frac{1}{10}$) of such remainder, and payable with interest at the times and in the manner aforesaid.

SECTION 4. That upon the sale of said bonds the proceeds thereof shall be placed in the village treasury, and the clerk is hereby authorized and directed to draw, and the treasurer to pay, a warrant for the sum of two thousand dollars ($2,000) in favor of Ellen R. Baker, the amount certified to be due her for extending said
26 Ivenhoe avenue also another warrant for the sum of $103.58 in favor of Howard Ferris, judge of the probate court, to pay court costs in said condemnation; also to Wm. E. Bundy, $5,000 for solicitor's fee; also to W. E. Wichgar, $45.00 for expert witnesses, transcripts, fees, etc.; also to the village of Norwood $20.00 for advertising, printing, etc.

SECTION 5. That the said annual assessment, and all portions thereof, shall be paid into a sinking fund when collected, and shall be applied to the payment of said bonds and the interest thereon, as the same shall become due, and to no other purpose whatsoever.

SECTION 6. This ordinance shall take effect from and after the earliest period allowed by law.

Done at the council chamber in Norwood, Ohio, this 2nd day of May, A. D. 1892.

AARON McNEILL, *Mayor.*

Attest: W. E. WICHGAR, *Clerk.*

* * * I, W. E. Wichgar, clerk of the village of Norwood, hereby certify that the foregoing is a true copy of an ordinance, No. 366, passed by the council of the village of Norwood on the 2nd day of May, 1892. I further certify that the same was duly

published by posting true copies thereof in six (6) of the most public places in the corporation, to wit:

1 at the B. and O. S. W. R'y station, East Norwood.
1 " " " " " Norwood.
1 " C., L. and N. " " Norwood.
1 " " " " Hopkins avenue.
1 " " " " Ivenhoe.
1 " town hall, each for a period of 15 days, commencing on the 15th day of May, 1892.

W. E. WICHGAR,
[SEAL.] *Clerk of the Village of Norwood.*

27 EXHIBIT "B."

THE STATE OF OHIO, }
Hamilton County. }

Probate Court.

THE VILLAGE OF NORWOOD, Plaintiff, }
vs. } Application to Assess
ELLEN R. BAKER and WILLIAM C. BAKER, } Compensation.
Her Husband, Defendants. }

Plaintiff represents that it is a village under the laws of Ohio, and that its council, by ordinance duly passed on the nineteenth day of October, A. D. 1891, declared its intention to and did appropriate to public use for street purposes for opening and extending Ivenhoe avenue the following-described property, to wit:

Commencing at a point in the south line of section four (4), township 3 F. R., 2 M. P., said point being one hundred and fifty (150) feet west of the southeast corner of L. C. Hopkins' subdivision as recorded in Plat Book No. 4, page 204, Hamilton county, Ohio, records, thence south with the east line of Ivenhoe avenue three hundred (300) feet to the north line of Williams avenue, thence west with the north line of Williams avenue fifty (50) feet, thence north parallel to the first-described line three hundred (300) feet, thence east fifty feet (50) to the place of beginning.

The defendants own or claim to own or have some interest in or title to said property.

Wherefore plaintiff asks the court to cause a jury to be impaneled to make inquiry into and assess the compensation to be paid by the plaintiff for the property appropriated as above set forth, and that upon the payment to the owners or deposit of the amount so
28 assessed, as the court shall order, possession of said property may be awarded it according to law.

W. E. BUNDY,
Solicitor of the Village of Norwood.

THE STATE OF OHIO, }
Hamilton County, }

Probate Court.

THE VILLAGE OF NORWOOD, Plaintiff, }
vs. } Præcipe.
ELLEN R. BAKER *et al.*, Defendants, }

To the clerk:

Issue notice to the defendants named in the above application that the plaintiff will apply to the Honorable Howard Ferris, judge of the probate court of Hamilton county, on the 15th day of December, 1891, at 10 o'clock a. m., for the impaneling of a jury to make inquiry into and assess compensation to be paid by the Village of Norwood to the owners for the following property, to wit:

Commencing at a point in the south line of section four (4), T. 3, F. R. 2, M. P., said point being one hundred and fifty (150) feet west of the southeast corner of L. C. Hopkins' subdivision as recorded in Plat Book No. 4, page 204, Hamilton county, Ohio, records, thence south with the east line of Ivenhoe avenue three hundred (300) feet to the north line of Williams avenue, thence west with the north line of Williams avenue fifty (50) feet, thence north parallel to the first-described line three hundred (300) feet, thence fifty (50) feet east to the place of beginning.

W. E. BUNDY,
Solicitor of the Village of Norwood.

Filed Dec. 5, 1891.

29 STATE OF OHIO, }
Hamilton County. }

In the Probate Court.

THE VILLAGE OF NORWOOD, Plaintiff, }
vs. } # 4886. Entry.
ELLEN R. BAKER & WM. C. BAKER, Defendants. }

This cause coming on to be heard upon the application of the Village of Norwood to impanel a jury to assess the compensation to be paid to the owners of the property sought to be appropriated herein and described in the application, and it appearing to the court that notice of the time and place of such application has been given to all the owners of such property in the ordinary manner of serving legal process five days previous to said application, and that such notice is reasonably specific and certain, the court doth order and adjudge that a jury be impaneled on the seventeenth day of February, A. D. 1892, at 10 o'clock a. m., to make inquiry into and assess the compensation to be paid for said property.

HOWARD FERRIS,
Probate Judge.

Entered Jan. 21, 1892, vo. 139, page 288.

30 Hamilton Probate Court.

THE VILLAGE OF NORWOOD
vs.
ELLEN R. BAKER *et al.* } No. 4886. Verdict.

This day came the parties, by their attorneys, and also came the jury heretofore impaneled and sworn in cause No. 4904, The Village of Norwood *vs.* Edward M. Mills *et al.*, and, the parties having heretofore agreed to submit this case to said jury, thereupon said jury was duly sworn according to law and the trial proceeded.

The parties having also agreed upon the amount to be paid to defendant by the Village of Norwood, thereupon, after hearing the testimony, the court submitted the case to the jury, with instructions to brin*d* in a verdict for the amount agreed upon.

Thereupon said jury retired to their room, in charge of the sheriff, for deliberation; and now comes said jury into open court, with their verdict in writing, and say:

We, the jury impaneled and sworn in this proceeding, do find and assess compensation and damages to be paid by The Village of Norwood, plaintiff, by reason of the appropriation of said property to its use in the case submitted to us as follows:

To the owner of tract 1, as described in the petition, we assess as compensation for land taken.... ..... $2,000 00
As damages to the residue of tract.....

We make said assessment irrespective of any benefit to the owner from any improvement proposed by said corporation.

E. C. Langdon,	C. W. Muchmore,	John Todd,
George W. Victor,	Geo. Hetzler,	Abraham Lapp,
M. Mack,	E. A. Fricke,	John Lee,
John Cornish,	William Marqua,	George Schreiber.

HOWARD FERRIS,
Probate Judge.

Entered March 14, 1892, vol. 140, page 237.

31 Hamilton County Probate Court.

THE VILLAGE OF NORWOOD, Plaintiff,
vs.
ELLEN R. BAKER *et al.*, Defendants. } # 4886. Final Decree.

This cause coming on to be heard upon the application, the evidence, and the verdict of the jury heretofore rendered herein, assessing the compensation to be paid to the owner or owners of the lot or tract of land described in the application by reason of the appropriation of same to public use by the plaintiff corporation at $2,000, and the court, proceeding further to consider said cause, doth find that Ellen R. Baker is the owner of said property so taken and is entitled to receive the said amount of two thousand dollars therefor.

It is consequently adjudged that said verdict be confirmed, and

that said plaintiff corporation, upon payment within six months from the date of this entry to the owner of said tract of land of the amount of said verdict, or upon deposit of same with the clerk of this court for the use of said owner, shall be entitled to take possession of and to hold said premises for the uses and purposes of said appropriation, and upon such payment or deposit an order may issue to the sheriff of Hamilton county, Ohio, to put the plaintiff in possession of said premises, and it is considered by said court that the plaintiff pay the costs of this proceeding, taxed at $— *dollars.*

HOWARD FERRIS,
Probate Judge.

Entered Mar. 21, 1892, vo. 140, page 292.

32 Hamilton County, Ohio, Probate Court.

THE VILLAGE OF NORWOOD, Plaintiff,
vs.
ELLEN R. BAKER, Defendant. } # 4886. Entry.

It appearing to the court that the plaintiff has paid in full the sum of $2,000.00 to the defendant for the land taken, in accordance with the verdict of the jury in this cause, it is ordered that the said plaintiff shall have immediate possession and ownership of said premises for the uses and purposes of the appropriation consummated by this action.

HOWARD FERRIS,
Probate Judge.

Entered August 1, 1892, vo. 142, page 293.

33 THE STATE OF OHIO, }
Hamilton County. } *ss:*

Probate Court.

I, Howard Ferris, sole judge and *ex officio* clerk of the probate court within and for the county aforesaid, do hereby certify *that* the foregoing to be a true and correct transcript of the application to assess compensation, entry ordering impaneling of a jury, verdict of said jury, final decree authorizing payment of verdict to defendants, and of the order authorizing plaintiff to have immediate possession and ownership *In re* the Village of Norwood *vs.* Ellen R. Baker *et al.*, as the same appear from the records and files of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at Cincinnati, this 15th day of November, A. D. 1895.

[SEAL.]

HOWARD FERRIS,
Probate Judge & ex Officio Clerk.

THE STATE OF OHIO, } ss:
Hamilton County, }

Probate Court.

I, Howard Ferris, sole judge of the probate court within and for said county, the same being a court of law and record, hereby certify that the signature attached to the above certificate purporting to be that of Howard Ferris is his genuine signature, and that he was at the time thereof *ex officio* clerk of said probate court, and as such full faith and credit are due all his acts, and that the attestation of said clerk is in due form of law and by the proper officer.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at Cincinnati, this 15th day of Nov., A. D. 1895.

[SEAL.] HOWARD FERRIS,
Probate Judge.

34 & 35 THE STATE OF OHIO, } ss:
Hamilton County, }

Probate Court.

I, Howard Ferris, clerk of the probate court within and for said county, the same being a court of law and record, hereby certify that the signature attached to the above certificate purporting to be that — Howard Ferris is his genuine signature, and that he was at the time thereof judge of said probate court, and as such full faith and credit are due all his official acts.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at Cincinnati, this 15th day of November, A. D. 1895.

HOWARD FERRIS,
[SEAL.] *Clerk of Probate Court.*

36 And afterwards, to wit, on the 22nd day of November, A. D. 1895, the following exhibits, C and D, were filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

"EXHIBITS C AND D."

"C."

United States Circuit Court in and for the Southern District of Ohio, Western Division.

ELLEN R. BAKER, Plaintiff, *vs.* THE VILLAGE OF NORWOOD *et al.*, Respondents.	No. 4788.	Agreed Statement of Facts.

The complainant and respondent in open court now agree to the following as a true statement of facts in this cause in addition to those that are pleaded:

1st. That the exhibits marked "A" and "B" are correct transcripts, and the same may be, and are, considered in evidence.

2nd. That at the trial of the condemnation proceedings instituted by the Village of Norwood in the probate court of Hamilton county, Ohio, to condemn for public uses the strip fifty by 300 feet the complainant in this case, who was the defendant in that case, made no objection to the exercise of that right by the Village of Norwood nor did she deny the constitutionality of the statutes of Ohio authorizing such condemnation proceedings, and such proceedings condemning said strip were in fact in conformity to the statutes of the State of Ohio.

3rd. That the said sum of $2,000.00 awarded by the verdict of the jury in the condemnation proceedings in the probate court as compensation for the strip of land 50 by 300 feet so condemned and taken by the city was paid to and received by the defendant in that action, the complainant in this, Ellen R. Baker, and it was
37 that sum, together with the costs and charges, that the Village of Norwood undertook to assess back upon the land upon either side of said strip, as truly set forth and described by the complainant's petition, the said lands being located and of the dimensions described in the petition.

4th. The only witness called at the trial of the case, the cause being submitted upon the allegations in the petition, answer, and reply and upon the agreed statement of facts herein set forth, was William C. Baker, the husband of the complainant, who testified that he had lived upon the premises in controversy for a period of twenty-four years; that his residence adjoined Ivenhoe avenue adjacent on the east to the strip 50 by 300 feet that was condemned by the Village of Norwood; that the strip 50 by 100 feet was never opened to the public travel; that it was employed as a private way or street to the complainant's property and used only for roadway to the rear of plaintiff's property, to the stable and the carriage-house, the residence of complainant fronting upon Williams avenue and the stable being in the rear, the house and stable being just east of the strip 50 by 300 feet and lying along it, a little removed from it.

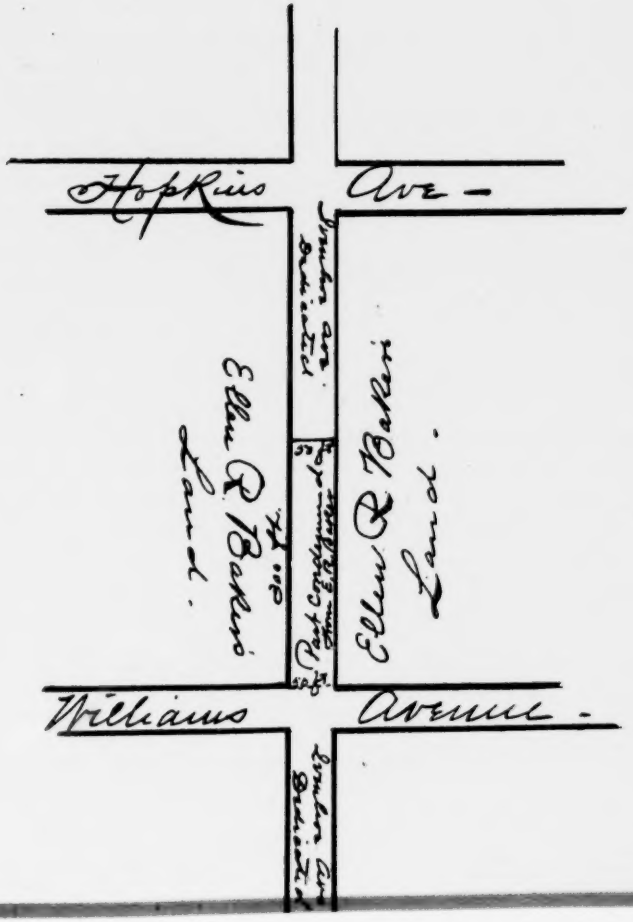
That no objection was made to anybody using it, and that it was a private driveway to the complainant's property 300 feet in length to the rear of the whole property where the stable and carriage-house was.

The plat attached is a correct plat of the tract of ground through which lay the strip of 50 by 300 feet condemned by the village of Norwood and the balance of the property of the complainant upon either side, upon which the Village of Norwood sought to assess back upon the complainant and her abutting and adjacent real estate the $2,000 aforesaid and the costs of the condemnation.

C. W. BAKER,
Att'y for Complainant.
WM. E. BUNDY,
Solicitor for Defendant.

(Here follows diagram marked p. 38.)

No. 269.
Village of Norwood } p 38
to
Ellen R Baker.



39 EXHIBIT "D."

United States Circuit Court, Western Division, Southern District.

ELLEN R. BAKER, Plaintiff,
vs.
VILLAGE OF NORWOOD *et al.*, Defendants. } No. 4788.

Charles W. Baker, counsel for plaintiff; Wm. E. Bundy, counsel for defendants.

Be it remembered that on the yearing of this cause at the October term, A. D. 1895, of the said circuit court, sitting at Cincinnati, Hamilton county, Ohio, before the Honorable George R. Sage, judge, upon the issues joined, the following evidence was introduced, to wit:

WILLIAM C. BAKER, who, being first duly sworn, testified on behalf of the plaintiff as follows:

Direct examination.

By Mr. BAKER:

Q. You are Mr. William C. Baker and live at Norwood?
A. Yes, sir.
Q. How long have you lived there?
A. Twenty-four years last July since I lived in my house there.
Q. You are the husband of Ellen R. Baker?
A. Yes, sir.
Q. She lives there also?
A. Yes, sir.
Q. Your residence adjoins Ivenhoe avenue, does it not?
A. Yes, sir.
Q. How long was Ivenhoe avenue open to public travel and used as a street by Mrs. Baker?

40 Objected to by counsel for defendants. Objection sustained; to which counsel for plaintiff excepted.

Q. How long was it open and used, Mr. Baker?
A. I cannot answer the question as you put it. It never was open to the public until Norwood claimed it to be a public street. It was a private street to our own property, used for a roadway to the rear of my property, to the stable and the carriage-house. We never objected to anybody making use of it, although it was used. Persons came through and drove over this street of mine, and there never was any objection by us to it.
Q. You had a house built there, Mr. Baker?
A. Yes, sir.
Q. Fronting on the street?
A. On the driveway, Ivenhoe——
Q. This was a private driveway to your property, 300 feet in

length to the rear of the whole lot where the stable and the carriage-house is. Ivenhoe avenue then extended up to the 300-foot strip taken on the other side and went to Montgomery pike, did it not?

The COURT: When you say it began on the other side it came around this way (indicating)?

Mr. BAKER: No, no; let me show you on a piece of paper so that your honor can see. (Diagram handed to the court.)

The COURT: I will hold this evidence open so that you can put anything in you wish.

Mr. BUNDY: We will offer a plat of the property.

(See plat attached to agreed statement of facts.)

41 And afterwards, to wit, on the 1st day of June, A. D. 1896, the following opinion was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Opinion of Judge Sage.

United States Circuit Court, Southern District of Ohio, Western Division.

ELLEN R. BAKER, Complainant,
vs.
THE VILLAGE OF NORWOOD *et al.*, Defendants. } # 4788.

The complainant's suit is to enjoin the defendants from making, enforcing, or collecting an assessment against her property amounting to $2,218.58. Her claim is that the same is in violation of her rights under the Constitution of the United States and under the constitution of Ohio. She is the owner of real estate situate in the village of Norwood, at the corner of Williams avenue and Baker street, as it was called prior to the in-orporation of said village, but since changed to and known as Ivenhoe avenue. The real estate referred to fronts upon Williams avenue, which runs east and west parallel with Hopkins avenue and south thereof. It extends back from Williams avenue a distance of three hundred feet. Baker street had been dedicated to the public use for street purposes prior to the incorporation of the village. It runs north and south, crossing Hopkins avenue at a right angle and extending beyond the same to within three hundred feet of Williams avenue, at which point it terminates, said point being on the March line of complainant's property.

After the incorporation of the village of Norwood it proceeded to exercise the right of eminent domain under the statute of Ohio, in the probate court of Hamilton county, to appropriate for the benefit of the public and of the said village a strip of ground beginning three hundred feet north of Williams avenue—that is to say,
42 on defendants' north line—thence south to Williams avenue, a distance of three hundred feet, the same being a protraction of the east line of Ivenhoe avenue to the south line of Williams

avenue; thence west with the north line of Williams avenue fifty feet; thence north parallel to the described line three hundred feet; thence fifty feet east along the north line of complainant's property to the place of beginning. Baker street for some distance south of Williams avenue and through other property had been dedicated as a street or thoroughfare before the incorporation of said defendant village. The purpose of the village was by the appropriation of the strip described to open it through complainant's premises and thereby make it a continuous street.

The complainant says that she is the owner of the real estate upon either side of said strip of ground so undertaken to be appropriated by said village—that is to say, of one hundred and fifty feet in depth upon the west and of one hundred and fifty feet in depth upon the east. In other words, the complainant sets forth that she is the sole owner of the real estate upon each side of said extension of Baker street throughout its entire length and back from the east lines of Baker street as extended one hundred and fifty feet and more.

It further appears from the bill that the value of said strip so proposed to be condemned and taken by the defendant village was by said probate court found to be $2,000, which said village was adjudged to pay complainant as and for the valuation of said strip of ground so appropriated.

The bill then sets forth that said village thereupon proceeded to assess back upon complainant's real estate upon either side of the strip condemned not only the said $2,000 adjudged to her as the value of the property taken, but also counsel fees, expenses of the suit, expenses and fees of expert witnesses, and other costs, fees, and expenses to her unknown, amounting in all to the sum of $2,218.58,
payable in ten annual installments, with interest at six per
43 cent.—that is to say, said village has undertaken to take three hundred feet by fifty feet of complainant's property, and, having fixed its valuation by proceedings at law at $2,000, now proposes to assess upon complainant's adjacent property said $2,000, with all the costs and expenses incidental thereto, whereby in fact the property of the complainant has been taken and has been sought to be taken by said village for the use of the general public not only without compensation to the complainant, but an actual expense and outlay in addition of $218.58, or which is to make the complainant not only pay for her own property taken for the benefit of the village and of the public without compensation, but also to pay the expenses of so taking it.

Complainant refers to the provision of the Revised Statutes of Ohio for relief against such assessment, and, averring that she has no remedy, save by injunction, appeals to her right under said statutes to contest the same by bill to enjoin its collection or enforcement. The auditor of the county is made defendant for the reason that, as appears from the bill, the village has certified to him the first installment of the assessment, and in accordance with the statute he has entered the same on the tax duplicate of the county, with a penalty thereon, in order to make said assessment and pen-

alty a charge and a lien upon the complainant's real estate in Hamilton county.

The bill also sets forth that the auditor has certified said assessments and penalties to the treasurer of the county, and that the treasurer has caused the same to be placed upon the tax duplicate against complainant and made the same a charge and lien upon all her real estate; is about to collect the same, with the penalties added thereto; all without warrant or authority of law. The prayer is for an injunction against all the defendants.

It was held by the supreme court of Ohio, in Caldwell *vs.* Village of Carthage, 49 O. S., 334, that where land is appropriated for a street improvement an assessment by the foot front of the
44 property bounded by and abutting upon the improvement to pay the cost thereof is not in violation of section 1 of the 14th amendment of the Constitution of the United States. There the specific objection was that no preliminary resolution declaring the necessity of the improvement, which the council of the village was required to pass and to give notice of and publish, as provided in section 2304 of the Revised Statutes, was adopted by the council, and consequently no publication was made nor was there any service of notice of such resolution. The supreme court held that the section did not apply to the condemnation of private property for opening, extending, straightening, or widening a street. It does not appear that the general question of constitutional power which is presented in this case was presented to the court in that case or was considered.

Granting, for the sake of argument, that where property is appropriated for a street the compensation to the owners and the expense of making the appropriation may be assessed upon the several owners, each bearing his proper share, quite a different question is presented when, as here, a municipality undertakes to appropriate to public use the real estate of a single owner for a public street, and then assess back upon him not only the compensation awarded for the entire street, but also all the expenses of the proceeding. If such a proceeding is not a taking for public use without compensation, I am at a loss to know what would constitute such a taking.

In Davidson *v.* New Orleans, 96 U. S., 107, Mr. Justice Bradley said: "If a State by its laws authorized private property to be taken for public use without compensation, I think it would be depriving a man of his property without due process of law." The same question was considered in Kentucky tax cases, 115 U. S., 331, and this language of Mr. Justice Bradley was quoted with approval.

Under the Ohio constitution, where private property is taken for public use compensation therefor must first be made in
45&46 money, or first secured by a deposit of money, and the compensation must be assessed by jury, without deduction for benefits to any property of the owners.

This whole subject was considered by Judge Jackson in Scott *vs.* The City of Toledo, 36 Fed. Rep., page 385. He held that such proceedings as are complained of in this bill are in violation of the provision of the 14th amendment of the Constitution of the United

States, that no State shall deprive any person of life, liberty, or property without due process of law.

The equity of this case is with the complainant, and a perpetual injunction will be decreed against the defendants, as prayed for, with costs.

GEO. R. SAGE,
U. S. District Judge.

June 1, 1896.

47 And afterwards, to wit, on the 5th day of June, A. D. 1896, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Journal 3, page 228.

The court finds upon the issues joined for the complainant, and that she is entitled in equity to have the relief granted her that she prays for in her bill.

The Village of Norwood is perpetually enjoined from making the assessment complained of in the said bill in equity, from entering the same upon their records, and from assessing any penalty thereon or therefrom, and from collecting the same, or from maintaining and holding the same as a lien against the complainant's property.

And the Village of Norwood is further enjoined from certifying such assessment for collection to the auditor of Hamilton county and the treasurer of said county, and the auditor of Hamilton county and the treasurer of Hamilton county are likewise perpetually enjoined from entering or maintaining upon their records any record of such assessment and from maintaining the same as a lien upon the property of the complainant described in her bill, and from collecting the same or any part thereof.

The defendant The Village of Norwood is ordered to pay the costs herein; to all of which the defendants except.

48 & 49 And afterwards, to wit, on the 21st day of October A. D. 1896, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Petition for Appeal.

United States Circuit Court, Southern District of Ohio, Western Division.

ELLEN R. BAKER, Complainant, *vs.* THE VILLAGE OF NORWOOD, a Municipal Corporation, Situated in Hamilton County, Ohio, Duly Organized under the Laws of the State of Ohio; John Hagerty, Auditor of Hamilton County, Ohio, and Leo Schott, Treasurer of Hamilton County, Ohio, Defendants.	No. 4788. Petition for Appeal.

The above-named defendant, The Village of Norwood, conceiving

itself aggrieved by the decree made and entered on the 5th day of June, A. D. 1896, in the above-entitled cause, does hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors, which is filed herewith; and it prays that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court.

Dated July —, A. D. 1896.

WM. E. BUNDY,
Solicitor for the Village of Norwood.

The foregoing claim of appeal is allowed and bond for appeal fixed at $500.

GEO. R. SAGE,
U. S. District Judge, S. D. O., Sitting in and Holding the U. S. C. C. in and for the S. D. O., Western Division, in Above-entitled Cause.

50 And afterwards, to wit, on the 21st day of October, A. D. 1896, the following assignment of errors was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Assignment of Errors.

United States Circuit Court, Southern District of Ohio, Western Division.

ELLEN R. BAKER, Complainant, *vs.* THE VILLAGE OF NORWOOD, a Municipal Corporation, Situated in Hamilton County, Ohio, Duly Organized under the Laws of the State of Ohio; John Hagerty, Auditor of Hamilton County, Ohio, and Leo Schott, Treasurer of Hamilton County, Ohio, Defendants.	No. 4788. Assignment of Errors.

And now, on the — day of July, A. D. 1896, comes the Village of Norwood and says that the decree entered in this cause on the 5th day of June, A. D. 1896, is erroneous and against the just rights of said defendant for the following reasons:

First. The said decree of the circuit court for the southern district of Ohio, western division, granting the prayer of plaintiff's bill for injunction, should not have been made, but, on the contrary, the court should have found the equities of the case to be with this defendant, and the decree should have been entered dismissing the complainant's bill at her costs.

Second. The court should have found that the proceedings of the Village of Norwood were regular and in accordance with the due process of law.

Third. Said condemnation proceedings and the statutes of the State of Ohio relating to assessments therefor are not in conflict with the constitution of said State nor in contravention of
51 the bill of rights or the Constitution of the United States and do not constitute a taking of private property for public purposes without compensation.

Fourth. It appears from the record that the property of the plaintiff was duly appropriated and trial had in the probate court of Hamilton county, Ohio, as provided by law; that the plaintiff, who was defendant in that action, urged no objection therein, although the appropriating ordinance there introduced contained as one of its provisions a declaration of the intent of the corporation to assess back upon the abutting property the amount of the compensation, together with all costs and expenses of said proceeding, and that thereafter the plaintiff received and accepted the amount of compensation allowed to her by the verdict of the jury in that case. It also appears from the testimony that the property condemned had long been open for travel, but claimed as a private thoroughfare.

Fifth. Therefore, upon the whole record, it appears that the equities are with the Village of Norwood, and the court erred in entering this judgment and decree in favor of the plaintiff, when the same should have been in favor of said defendant.

Wherefore this defendant prays that said decree be reversed, and that the said circuit court may be directed to enter a decree in accordance with the prayer of the answer.

WM. E. BUNDY,
Solicitor for the Village of Norwood and of Counsel for said Defendant.

52 And afterwards, to wit, on the 29th day of October, A. D. 1896, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Journal 3, page 369.

Appeal bond allowed, &c.

The defendant The Village of Norwood having heretofore duly filed its petition of appeal and assignment of errors, the court doth now, upon the application of its attorney, allow the appeal herein and doth fix the appeal bond in the sum of five hundred ($500.00) dollars.

And afterwards, to wit, on the 11th day of November, A. D. 1896, the following appeal bond was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Appeal Bond.

Circuit Court of the United States, Southern District of Ohio, Western Division, *ss.*

ELLEN R. BAKER
vs.
THE VILLAGE OF NORWOOD *et al.*

Know all men by these presents that we, The Village of Norwood, as principal, and John C. Masker, as surety, are held and firmly bound unto Ellen R. Baker in the sum of five hundred dollars, to be paid to the said Ellen R. Baker, her executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

53 Sealed with our seals. Dated this 11th day of November, 1896.

Whereas the above-named The Village of Norwood has taken an appeal to the Supreme Court of the United States of America to reverse the decree rendered in the above-entitled action by the circuit court of the United States for the southern district of Ohio:

Now, therefore, the condition of this obligation is such that if the above-named Village of Norwood shall prosecute its said appeal to effect and answer all costs if it shall fail to make good its plea, then this obligation to be void; otherwise to remain in full force and virtue.

THE VILLAGE OF NORWOOD, [SEAL.]
By WM. E. BUNDY, *Solicitor.* [SEAL.]
JOHN C. MASKER. [SEAL.]

Sealed and delivered in presence of—
ROB'T C. GE*ROG*I.
SIDNEY J. COWEN.

The above security is approved.

GEO. R. SAGE,
District Judge of the United States, S. D. O., Sitting and Holding Circuit Court at the Trial of said Cause.

SOUTHERN DISTRICT OF OHIO, *ss:*

I, John C. Masker, one of the sureties above named, do solemnly swear that after paying my just debts and liabilities I am worth twenty thousand dollars in real estate, in my own name, situate in the county of Hamilton.

JOHN C. MASKER.

Sworn to before me the 11th day of November, 1896.
[SEAL.] ROB'T C. GEORGI,
Deputy Clerk U. S. Circuit Court, S. D. O.

53½ THE UNITED STATES OF AMERICA, *88:*

To Ellen R. Baker, Greeting:

Whereas The Village of Norwood has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of Ohio, made in favor of you, the said Ellen R. Baker, and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the tenth day of December, A. D. 1896, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Cincinnati, in the sixth circuit, this 11th day of November, in the year of our Lord one thousand eight hundred and ninety-six.

GEO. R. SAGE,
District Judge of the United States of America,
Southern District of Ohio, Sitting and Holding
Circuit Court at the Trial of said Cause.

53¾ [Endorsed:] Marshal's civil docket No. 113. United States circuit court, S. D. O., W. D. No. 4788. Ellen R. Baker *vs.* The Village of Norwood *et al.* Citation to appellee. Filed Nov. 20, 1896. B. R. Cowen, clerk.

UNITED STATES OF AMERICA, }
Southern District of Ohio. }

Received this writ at Cincinnati, Ohio, on the 19th day of November, 1896, and on the 20th day of November, 1896, I executed the same on the within-named Ellen R. Baker by leaving a true copy hereof, with all the endorsements thereon, at her usual place of residence, at Norwood, Ohio, and I left said copy in the hands of an adult member of her family.

MICHAEL DEVANNEY,
U. S. Marshal, S. D. O.,
By JOHN W. DEVANNEY, *Deputy.*

Service	2 00
Copy	50
7 mi	42
Return	30
	3 22

54 THE UNITED STATES OF AMERICA, }
Southern District of Ohio, Western Division, } *88:*

I, Benjamin R. Cowen, clerk of the circuit court of the United States of America within and for the division and district aforesaid, do hereby certify that the foregoing is a true and complete transcript of the proceedings had by and before said court in the above-entitled cause and as the same appears of record and on file in the clerk's office of said court.

Seal of the Circuit Court, South'n Dist. of Ohio.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Cincinnati, Ohio, this 21st day of November, A. D. 1896.

B. R. COWEN, *Clerk*,
By JANIE W. F. COWEN,
Deputy Clerk.

Endorsed on cover: Case No. 16,444. S. Ohio C. C. U. S. Term No., 269. The Village of Norwood, appellant, *vs.* Ellen R. Baker. Filed December 7, 1896.